

Department of Justice

§2.218

local or an institutional revocation hearing. In lieu of an attorney, an alleged violator may be represented at any revocation hearing by a person of his choice. However, the role of such non-attorney representative shall be limited to offering a statement on the alleged violator's behalf. Only licensed attorneys shall be permitted to question witnesses, make objections, and otherwise provide legal representation for supervised releasees, except in the case of law students appearing before the Commission as part of a court-approved clinical practice program. Such law students must be under the personal direction of a lawyer or law professor who is physically present at the hearing, and the examiner shall ascertain that the releasee consents to the procedure.

§2.217 Issuance of subpoena for appearance of witnesses or production of documents.

(a)(1) If any adverse witness (*i.e.*, a person who has given information upon which revocation may be based) refuses, upon request by the Commission, to appear at a preliminary interview or local revocation hearing, a Commissioner may issue a subpoena for the appearance of such witness.

(2) In addition, a Commissioner may, upon a showing by the releasee that a witness whose testimony is necessary to the proper disposition of his case will not appear voluntarily at a local revocation hearing or provide an adequate written statement of his testimony, issue a subpoena for the appearance of such witness at the revocation hearing.

(3) A subpoena may also be issued at the discretion of a Commissioner if an adverse witness is judged unlikely to appear as requested, or if the subpoena is deemed necessary for the orderly processing of the case.

(b) A subpoena may require the production of documents as well as, or in lieu of, a personal appearance. The subpoena shall specify the time and the place at which the person named therein is commanded to appear, and shall specify any documents required to be produced.

(c) A subpoena may be served by any Federal or District of Columbia officer

authorized to serve criminal process. The subpoena may be served at any place within the judicial district in which the place specified in the subpoena is located, or any place where the witness may be found. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such a person.

(d) If a person refuses to obey such subpoena, the Commission may petition a court of the United States for the judicial district in which the revocation proceeding is being conducted, or in which such person may be found, to require such person to appear, testify, or produce evidence. If the court issues an order requiring such person to appear before the Commission, failure to obey such an order is punishable as contempt, as provided in 18 U.S.C. 4214(a)(2).

§2.218 Revocation decisions.

(a) Whenever a releasee is summoned or retaken by the Commission, and the Commission finds by a preponderance of the evidence that the releasee has violated one or more conditions of his supervised release, the Commission may take any of the following actions:

(1) Restore the releasee to supervision, and where appropriate:

(i) Reprimand the releasee;

(ii) Modify the releasee's conditions of release;

(iii) Refer the releasee to a residential community corrections center for all or part of the remainder of his term of supervised release; or

(2) Revoke the term of supervised release.

(b) If supervised release is revoked, the Commission shall determine whether the releasee shall be returned to prison to serve a new term of imprisonment, and the length of that term, or whether a new term of imprisonment shall be imposed but limited to time served. If the Commission imposes a new term of imprisonment that is less than the applicable maximum term authorized by law, the Commission shall also determine whether to impose a further term of supervised release to commence after the new term of imprisonment has been served. If the new term of imprisonment is limited to

§2.219

28 CFR Ch. I (7–1–02 Edition)

time served, any further term of supervised release shall commence upon the issuance of the Commission's order. Notwithstanding the above, if a releasee is serving another term of imprisonment of 30 days or more for any federal, state, or local crime, any further term of supervised release imposed by the Commission shall not commence until that term of imprisonment has been served.

(c) A releasee whose term of supervised release is revoked by the Commission shall receive no credit for time spent on supervised release, including any time spent in confinement on other sentences (or in a halfway house as a condition of supervised release) prior to the execution of the Commission's warrant.

(d) The Commission's decision regarding the imposition of a term of imprisonment following revocation of supervised release, and any further term of supervised release, shall be made pursuant to the limitations set forth in §2.219. Within those limitations, the appropriate length of any term of imprisonment shall be determined by reference to the guidelines at §2.21.

(e) Whenever the Commission imposes a term of imprisonment upon revocation of supervised release that is less than the authorized maximum term, it shall be the Commission's general policy to impose a further term of supervised release that is the maximum permitted by §2.219. If the Commission imposes a new term of imprisonment that is equal to the maximum term authorized by law (or in the case of a subsequent revocation, that uses up the remainder of the maximum term of imprisonment authorized by law), the Commission may not impose a further term of supervised release.

(f) Where deemed appropriate, the Commission may depart from the guidelines at §2.21 (with respect to the imposition of a new term of imprisonment) in order to permit the imposition of a further term of supervised release.

(g) Decisions under this section shall be made upon the concurrence of two Commissioner votes, except that a decision to override an examiner panel recommendation shall require the concurrence of three Commissioner votes.

The Commission's decision shall ordinarily be issued within 21 days of the hearing, excluding weekends and holidays.

§2.219 Maximum terms of imprisonment and supervised release.

(a) *Imprisonment; first revocation.* When a term of supervised release is revoked, the maximum authorized term of imprisonment that the Commission may require the offender to serve, in accordance with D.C. Code §24–203.1(b)(7), shall be:

(1) Not more than 5 years, if the maximum term of imprisonment authorized for the offense is life, or if the offense is statutorily designated as a Class A felony;

(2) Not more than 3 years, if the maximum term of imprisonment authorized for the offense is 25 years or more, but less than life, and the offense is not statutorily designated as a Class A felony;

(3) Not more than 2 years, if the maximum term of imprisonment authorized for the offense is 5 years or more, but less than 25 years; or

(4) Not more than 1 year, if the maximum term of imprisonment authorized for the offense is less than 5 years.

(b) *Further term of supervised release; first revocation.*—(1) When a term of supervised release is revoked, and the Commission imposes less than the maximum term of imprisonment authorized by paragraph (a) of this section, the Commission may also impose a further term of supervised release after imprisonment.

(2) The maximum authorized length of such further term of supervised release shall be the original maximum term of supervised release that the sentencing court was authorized to impose, less the term of imprisonment imposed by the Commission upon revocation of supervised release. The original maximum authorized term of supervised release is as follows:

(i) Five years if the maximum term of imprisonment authorized for the offense of conviction is 25 years or more;

(ii) Three years if the maximum term of imprisonment authorized for the offense of conviction is more than one year but less than 25 years; and